

Memorandum of Agreement

Between

the Department of Defense and the National Institutes of Health

On Use of NIH Government-Wide Acquisition Contracts

Introduction

In recognition of the mutual agreement of the undersigned parties to work together as Federal partners and to demonstrate their commitment to achieve compliance with acquisition, Federal assistance, and other related policies and applicable regulations, the Department of Defense (DoD) and the National Institutes of Health (NIH) hereby enter into this Memorandum of Agreement (MOA). The MOA relates to acquisitions under NIH's three Government Wide Acquisition Contracts (GWACs): Chief Information Officer—Solutions and Partners 2 *Innovations* (CIO-SP2i), Image World 2 *New Dimensions* (IW2nd), and the Electronic Commodities Store III (ECS III).

Authority

The MOA is entered into under the authority of the Clinger-Cohen Act of 1996, (formerly the "Information Technology Management Reform Act of 1996"), 40 U.S.C. §§ 11101, et seq., at Section 11314(a) (3).

Background

NIH's Executive Agent authority, which was granted by OMB in September 2000 and extended through the life of the contracts, encompasses three GWACs: CIO-SP2i (ceiling of \$19.5 billion, end date of 12/20/10), IW2nd (ceiling of \$15 billion, end date of 12/20/10), and ECS III (ceiling of \$6 billion, end date of 11/25/12). These three contracts promote Government-wide competition and provide effective, pro-active customer service to a wide range of Federal agencies. The contracts have an excellent record of service to NIH, the Department of Health and Human Services (DHHS), and the Federal Government as a whole; have unique breadth and depth of products and services; and are staffed by experienced and dedicated teams.

Definitions

The following terms define the meaning of words used in this MOA:

"Assisting Agency" is NIH.

"Directed Task Order" is a task order (TO) placed by a DoD Contracting Officer (CO) that utilizes the CIO-SP2i or IW2nd contract. The DoD official remains the CO of record.

“Assisted Task Order” is a task order placed by DoD that utilizes the CIO-SP2i or IW2nd contract and for which the National Institute of Health Information, Technology, Acquisition and Assessment Center (NITAAC) Contracting Officer is the CO of record.

“Delivery Order” is a delivery order placed by a DoD Contracting Officer utilizing the IW2nd or ECS III contract.

“Requesting Agency” or “Procuring Agency” is DoD or their authorized procurement activity.

Purpose

DoD and NIH share a single objective of providing best-value goods and services, in a timely manner, in support of DoD. This MOA establishes a framework for the relationship to support the mission of both agencies and to improve efficiencies and leverage resources and capabilities within each agency. In particular, this MOA establishes procedures for the use of NIH’s GWACs by DoD.

Services/Products

NIH’s three GWACs provide a variety of Information Technology (IT) products and product solutions (such as installation, training, and warranty); IT systems and services necessary to support Chief Information Officer (CIO) requirements; and hardware, software, and integrated solutions for implementing imaging technology.

Principles

Both agencies recognize the benefit of coordinating their respective efforts. In carrying out their respective responsibilities, each agency will:

- Ensure that accurate data are captured and reported
- Ensure a collaborative effort between appropriate individuals throughout the acquisition
- Ensure that the responsibilities of DoD personnel and NIH personnel are implemented in a coordinated and consistent manner

Responsibilities of the Parties

The agencies agree to the following:

1. As the requesting agency, DoD is responsible for all funding and for meeting all DoD-specific policies and regulations with regard to funding. This includes ensuring that funding commitments and accounts are consistent with statutory authority.
2. NIH will ensure that funds provided in excess of contract requirements are deobligated and returned to DoD customers in a timely manner.

3. NIH will ensure that its internal acquisition practices for DoD orders comply with DoD interagency contracting requirements contained in the Defense Federal Acquisition Regulation Supplement (DFARS), and policy memorandums and directives posted on the Defense Procurement and Acquisition Policy's Interagency Contracting web page.
4. DoD will ensure that appropriate justification is documented for using NIH contracts in accordance with DFARS 217.7802 and NIH will verify this documentation is on file.
5. DoD will place orders only for *bona fide* needs within the period of fund availability. Orders and funds for *bona fide* needs of the DoD shall be in accordance with applicable statutory authorities and restrictions. The DoD will ensure any *bona fide* needs funds affected by revised or altered statutory restrictions are handled appropriately.
6. DoD and NIH will work together to ensure that each multiple-award contract vendor is provided Fair Opportunity to be Considered (FOC), per FAR 16.505.
7. Where an exception to the fair opportunity process exists, the DoD Program official will provide adequate rationale to the responsible contracting officer (DoD, if direct order and NIH, if assisted). The contracting officer will ensure that the approved documentation for Exception to FOC is included in the task order file.
8. Where task orders meet or exceed the DoD threshold for capturing past performance information (see Subpart 242.15 Contractor Performance Information and see DoD Class Deviation 99-O0002, Past Performance, issued on January 29, 1999. This deviation is effective until further notice), the NIH Contracting Officer will collaborate with the DoD customer to provide feedback to the contractor and populate the automated past performance data base.

Task Order Related (CIO-SP2i and IW2nd)

9. NIH will review all Statements of Work (SOWs) and Performance Work Statements (PWSs) to ensure requirements are within the scope of the NIH contract. If needed, NIH and DoD will collaborate to make the necessary modifications to the SOW or PWS.
10. DoD and NIH will ensure that SOWs and PWSs are complete in accordance with the SOW and PWS templates provided on the NITAAC CIO-SP2i and IW2nd web pages.
11. DoD and NIH will ensure utilization of the most appropriate contract type on TOs. For directed acquisition Time and Materials (T&M) orders, DoD will ensure that a Determination and Findings (D&F) is prepared. NIH will review, and collaborate as necessary. For assisted acquisition T&M orders, NIH will ensure that a D&F is prepared.

12. DoD and NIH will collaborate to ensure that appropriate acquisition planning is accomplished for all task order procurements.
13. When applicable, DoD and NIH will collaborate to ensure that quality assurance plans (QASP) are developed pre-award and further utilized in post-award contract administration.
14. DoD and NIH will collaborate to ensure that Interagency Agreements are complete and accurately reflect the work to be done and the funding to be used.
15. DoD and NIH will collaborate to ensure that adequate price analysis is performed and best value determinations are made consistent with the respective solicitation.
16. For directed acquisitions, DoD will ensure that adequate award decision documents are prepared for each TO. NIH will review, and collaborate as necessary. For assisted acquisitions, NIH ensures that the award decision document prepared by the DoD Requesting Agency official provides adequate rationale for the decision.

Delivery Order Related (ECS III):

17. DoD and NIH will work together to publicize the NIH GWACs and encourage the use of the ECS III quoting system.
18. NIH will provide on-line web pages, tools, and customer service staff to assist in obtaining contract and product information and contractor-supplied quotes within the limits of the contracts. NIH will post language to the ECS III website on proper pre-award roles and responsibilities of DoD program officials.
19. NIH does not place ECS III orders for any DoD agency. Funds are not transferred from DoD or in any way held or disbursed by NIH on behalf of DoD. The fee for use of the ECS III contract is paid as part of the delivery order to the ECS III vendor that is contractually responsible to collect the fee and provide it to NIH in a timely manner.

Fees

Reasonable and customary fees will be commensurate with the cost to award and administer orders. NIH will notify DoD of any proposed fee changes. The current fee structure is described below.

The fees listed in this MOA supersede previous MOA agreements between NIH and any individual DoD Agencies.

CIO-SP2i and IW2nd

The fee consists of a Contract Access Fee (applicable to both assisted and directed task orders, see tables below) and a Service Fee (assisted task orders only). The Service Fee is 1.5% of the initial award; .5% is due pre-award and the remaining 1% is collected post-award on an invoice by invoice basis. The Contract Access Fee is collected during the initial post-award billing cycle.

CIO-SP2i Contract Access Fee			
Business Category	Task Order Amount		
	\$0 – 5M	\$5M – 10M	Over \$10M
Large Business Fee %	1%	1%	1%
Small Business Fee %	1%	0.75%	0.50%

IW2nd Contract Access Fee				
Business Category	Task Order Amount			
	\$0 – 1M	\$1M – 5M	\$5M – 10M	Over \$10M
Large Business Fee %	1%	1%	1%	1%
Small Business Fee %	1%	0.75%	0.50%	0.25%

ECS III:

1% of the Delivery Order amount.

General

Each agency will keep the other informed of its relevant plans and schedules, will respond to the other agency's requests for information to the extent reasonable and practicable, and will strive to recognize and ameliorate any problems arising throughout implementation of this MOA. Any terms of this MOA found to be inconsistent with DoD or NIH directives or policies will be invalid, but the remaining terms and conditions will

remain in effect. This MOA conveys no signatory authority to NIH to procure for DoD or provide funding mechanisms for DoD requirements.

Amendments

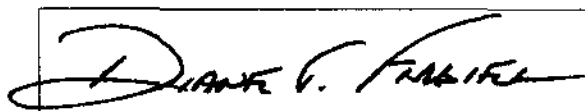
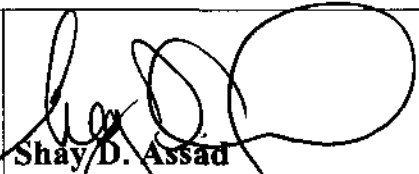
This MOA may be altered only by a subsequent written amendment, signed by the parties, expressly stating the parties' intention to amend their agreement. The amendment will be appended to this agreement.

Period of Agreement

This MOA will be effective upon signature by both parties and will remain in effect until such time as either party terminates this agreement. The parties will review this MOA at least once every year to determine whether it should be revised, renewed, or cancelled. Either party may terminate this agreement by providing 90 calendar-days' written notice to the other party.

Acceptance

The authorized signatories agree to the responsibilities, terms, and conditions of this MOA.

 Diane J. Frasier Head of the Contracting Activity Director, Office of Acquisition and Logistics Management, OM National Institutes of Health	 Shay D. Assad Director, Defense Procurement & Acquisition Policy, QUSD(AT&L) Department of Defense
Date: 2 April 2008	Date: 15 APRIL 2008

DoD-NIH MOA Action Items (3/2008)

	Action	Date	MOA Items	Responsible Office	Status
1	NIH and DoD will evaluate internal controls and will issue policy and procedure, as necessary, related to the final DoD IG audit findings, consistent with statute and regulation.	Began 9/2007 and is ongoing.	1-8 12-16	DoD & NIH	In Process: NIH Corrective Action Plan has been prepared and corrective actions are underway or have been completed.
2	Ensure complete SOW/PWS. Ensure all actions within scope of NITAAC contracts. Ensure correct contract type and prepare D&F when T&M or L-H as necessary.	Complete 12/2006 QA reviews are ongoing.	9-11	NIH	Complete: Quality assurance reviews to ensure compliance on-going.
3	NIH and DoD will collaborate to publicize and encourage the use of the ECS III ordering system. NIH will provide on-line web pages and tools on ESC III site. DoD will issue appropriate directives and memorandums to its COs regarding ESC III use; NIH will post these directives to web site.	Began 10/2007 and is ongoing.	17-19	DoD & NIH	Complete: Second and third items as of 2/2008 Ongoing: First item
4	NIH and DoD will conduct quarterly meetings to evaluate progress on action taken and identified emerging issues. Senior leadership meetings will be conducted annually.	Began 1 st QTR CY08.		DoD & NIH	
5	NIH and DoD will share strategy-sourcing information on a regular basis.	Began 1 st QTR CY08.			